IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8212 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANJAY NAVINCHANDRA

Versus

STATE OF GUJARAT

Appearance:

MR YATIN SONI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Mehsana, passed an order on August 30, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985, detaining Sanjay Navinchandra Soni of Punitnagar, Mehsana, under the provisions of the said

Act.

2. The detaining authority considered three offences registered against the detenu besides the statements of three anonymous witnesses. While considering these statements, after verification, the detaining authority came to conclusion that the witnesses genuinely suffered from the fear in respect of their person and property qua the detenu and, therefore, their identity is required to be kept anonymous in public interest. The detaining authority, therefore, exercised powers under Section 9(2) of the PASA Act. After considering less drastic remedies, the detaining authority came to conclusion that the petitioner is required to be detained under the provisions of the PASA Act in order to immediately prevent him from pursuing his activities which are detrimental to public order.

3. The detenu/petitioner has challenged the order of detention by this petition on various counts. Mr. Bhavsar, learned advocate appearing for learned advocate Mr. Yatin Soni for the petitioner, has, however, restricted his arguments to the ground that the detaining authority has mechanically accepted the proposal and has mechanically exercised powers under Section 9(2) of the PASA Act, while passing the order. According to Mr.Bhavsar, had the detaining authority read the statement of anonymous witnesses No.1 and 3, the authority would have realised that the statements give details of an incident to an extent that identity no more remains confidential or secret and, as such, exercise of powers under Section 9(2) of maintaining anonymity in respect of these witnesses is not required and, if it is exercised, it is futile. According to Mr. Bhavsar, this reflects mechanical and improper exercise of powers under Section 9(2). The order of detention, therefore, would stand vitiated and the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. If the statements of anonymous witnesses are considered, there appears substance in the argument advanced by Mr. Bhavsar that the details of the incident as given in the statement and the tenor of the statements of anonymous witnesses leave hardly anything to the imagination of the reader. The date, time and place of incident is disclosed. The incident is described in detail, which would leave hardly anything to the imagination and, as such, the anonymity even if given, is of no virtue. This will have a direct bearing on

propriety of exercise of powers by the detaining authority. The detaining authority, if it had viewed this from this angle, would have realised that anonymity can hardly be given by exercising powers under Section 9(2) of the PASA Act, if the allegations made in the statement are correct, which the detaining authority found to be so. Thus, the exercise of power under Section 9(2) would be improper and bad in law for two reasons, (1) that it is mechanical exercise and (2) that it cannot be considered to have been exercised in public interest. Under these circumstances, the order of detention would stand vitiated, so also the detention. The petition deserves to be allowed on this ground.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated August 30, 1999, passed against the detenu is hereby quashed. The detenu-Sanjay Navinchandra Soni is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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